Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-3

CURTIS PARHAM,
Appellant

v.

ELLIS FRANKLIN HUGHES,
Appellee

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

JURISDICTIONAL STATEMENT FILED JULY 3, 1978
PROBABLE JURISDICTION NOTED OCTOBER 2, 1978

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UNITED STATES SUPREME COURT

No. 78-3

CURTIS PARHAM,
Appellant
v.
ELLIS FRANKLIN HUGHES,
Appellee

CHRONOLOGICAL LIST OF PLEADINGS

(This Chronological List of Pleadings is provided in lieu of Docket Entries due to the fact that the Docket Entries are practically illegible.)

NATURE OF PLEADING OR RULING	DATE FILED
1. Original Complaint for Wrongful Death in Superior Court, Richmond County, Georgia	2-7-77
2. Answer	3-7-77
3. Requests for Admissions by Defendant	5-4-77
4. Answers to Requests for Admissions by Plaintiff	5-16-77
5. Motion for Summary Judgment by Defendant	7-18-77
6. Affidavit of Plaintiff in Opposition to Motion for Summary Judgment	8-29-77
7. Order denying Motion for Summary Judgment and finding Georgia's Wrongful Death Statute in violation of the United States Constitution	9-20-77
8. Order for Certificate of Immediate Review	9-20-77

NATURE OF PLEADING OR RULING	DATE FILED
9. Notice of Appeal to Georgia Supreme Court	10-19-77
10. Remittitur and Opinion of the Georgia Supreme Court	4-24-78
11. Motion for Rehearing in Georgia Supreme Court and Brief	4-12-78
12. Denial of Motion for Rehearing	4-19-78
13. Notice of Appeal to the United States Supreme Court	4-28-78
14. Probable Jurisdiction noted	10-2-78

IN THE SUPERIOR COURT FOR THE
COUNTY OF RICHMOND
STATE OF GEORGIA

Civil Action

File No. 5643-C

CURTIS PARHAM,
Plaintiff

vs.

ELLIS FRANKLIN HUGHES,
Defendant

ORDER

The defendant, Ellis Franklin Hughes, having filed a motion for summary judgment in the case styled above, and the same having come on for hearing on September 1st, 1977, and both parties having been represented by counsel, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1.

Curtis Parham is the natural father of Lemuel Parham, deceased, said minor child having been killed in an automobile accident on or about December 30, 1976.

2.

That the natural mother of said minor child, Cassandra Moreen, was killed in the same accident which claimed the life of the minor child, Lemuel Parham.

3.

That the deceased minor child Lemuel Parham was an illegitimate child, having been born to Curtis Parham and Cassandra Moreen, out of wedlock.

4.

That although Curtis Parham, the natural father of the child, never married Cassandra Moreen, the natural mother of said child, Curtis Parham did execute the birth certificate acknowledging paternity of the child. In addition, Curtis Parham paid the birth expenses for the birth of Lemuel Parham and had regularly supported said child from its birth until its death.

5.

That Curtis Parham at all times acknowledged the child as his son and was at all times acknowledged by the child as his father and in addition to paying child support, Curtis Parham maintained charge accounts at grocery stores for food and other necessities to further insure the support of his child.

6.

That Curtis Parham visited regularly with the deceased child and in fact saw him virtually every day and had the child with him on many weekends.

7.

That following the death of the minor child and the natural mother of the minor child in the collision identified herein, Curtis Parham instituted an action in the Superior Court of Richmond County, State of Georgia, for the wrongful death of the illegitimate child Lemuel Parham, asserting his rights to recover for the wrongful death of said child.

8.

That almost simultaneously, Estelle A. Moreen, maternal grandmother of the deceased minor child, in her capacity as Administratrix of the Estate of Lemuel

Parham, filed an identical action seeking to recover for the wrongful death of the minor child.

9.

That following the institution of the two actions for wrongful death identified above, Ellis Franklin Hughes, defendant in both actions, filed this motion for summary judgment against Curtis Parham contending that the plaintiff Curtis Parham was prohibited by law from bringing a wrongful death action for the death of his illegitimate son.

10.

That the Georgia Wrongful Death Statute presently provides that illegitimacy of the deceased child is not a bar to an action for wrongful death by the mother of said child. (See: Georgia Code Annotated § 105-1307).

11.

That the Georgia Legislature has placed primary responsibility for the support of illegitimate children upon the fathers of said children. (See: Georgia Code Annotated § 74-202).

CONCLUSIONS OF LAW

1.

To the extent that the Georgia Wrongful Death Statute conditions the right of either parent to sue for the wrongful death of its child upon the legitimacy or illegitimacy of the child, that Statute constitues a denial of equal protection and due process within the meaning of the 5th and 14th Amendments to the United States Constitution.

2.

To the extent that the Georgia Wrongful Death Statute purports to allow the mother of an illegitimate child to maintain an action for the wrongful death of that child and denies that right to the father of an illegitimate child, that Statute constitutes a denial of equal protection and due process in violation of the 5th and 14th Amendments to the United States Constitution.

3.

Where the state imposes the primary support obligation for illegitimate children upon the father of those children and where the father of an illegitimate child in fact has provided some level of support for that child and has acknowledged his paternity by execution of the birth certificate and has in every respect treated the child as his own, the State cannot constitutionally deny that father the right to maintain an action for the wrongful death of his child where the mother of said child is also deceased.

4.

The Court finds that Curtis Parham, natural father of the deceased illegitimate child Lemuel Parham, who has since the child's birth acknowledged his paternity, provided a level of support for said child and exercised extensive visitation with said child, is the proper person to maintain an action for the wrongful death of said minor child.

Based upon the foregoing Findings of Fact and Conclusions of Law, the motion for summary judgment filed by the defendant Ellis Franklin Hughes against the plaintiff, Curtis Parham, is hereby DENIED.

This the 13th day of September, 1977.

/s/ Franklin H. Pierce
FRANKLIN H. PIERCE
Judge
Richmond Superior Court
State of Georgia

IN THE SUPREME COURT OF GEORGIA

33071

HUGHES

v.

PARHAM

HILL, Justice, dissenting.

The majority fails to explain how the state's objective of promoting a legitimate family unit is furthered by denying the father of an illegitimate child an action for that child's wrongful death. The illegitimate child is already dead by the time the means chosen by the state comes into operation. The denial of a claim for a child's wrongful death does not promote the family as an institution for rearing that child in a timely or rational manner regardless of the level of scrutiny employed. The sanction adopted by the state is not suited and comes too late to motivate a father to provide care for his illegitimate child. It treats the father of an illegitimate child different from the mother of that same child and thus constitutes a denial of equal protection.

The majority seek to distinguish *Glona* v. *American Guarantee and Liability Ins. Co.*, supra, based on the difference in proving paternity vs. maternity, a ground which was expressly rejected in *Trimble* v. *Gordon*, supra, where the Court stated that although a state might adopt a more demanding standard of proof for fathers of illegitimate children than for mothers, the extreme means of complete exclusion of recovery was not permissible. Because I cannot accept at face value the tortfeasor's proffered state rationale or a distinction of *Glona* already rejected by the U.S. Supreme Court, I must respectfully dissent.

IN THE SUPREME COURT FOR THE STATE OF GEORGIA

Civil Action

File No. 33071

ELLIS FRANKLIN HUGHES,

Appellant

versus

CURTIS PARHAM,

Appellee

NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT

Notice is hereby given that Curtis Parham, the Appellee above named, hereby appeals to the Supreme Court of the United States from the Final Order of the Supreme Court for the State of Georgia upholding the validity of a Georgia Statute which had been found by the trial court to be repugnant to the Constitution of the United States, to-wit:

> The Supreme Court of the State of Georgia reversed a decision of the Superior Court of Richmond County, Georgia, which had sustained attacks on the Georgia Wrongful Death Statute made pursuant to the Equal Protection and Due Process Clauses of the United States Constitution and finding that Statute in violation of the Due Process and Equal Protection Clauses of the United States Constitution to the extent that it (a) conditioned the right of either parent to sue for the wrongful death of its child upon the legitimacy or illegitimacy of the child, (b) purports to allow the mother of an illegitimate child to maintain an action for the wrongful death of that child and denies that right to the father of an illegitimate child, (c) imposes the

primary support obligation for illegitimate children upon the father of those children and then where the father of an illegitimate child has, in fact, provided a level of support for that child, has acknowledged its paternity by execution of the birth certificate and has, in every respect, treated the child as his own, denies that father the right to maintain an action for the wrongful death of his child where the mother of said child is also deceased.

The Supreme Court for the State of Georgia reversed the Order of the Superior Court of Richmond County, Georgia, upholding the validity of the Georgia Wrongful Death Statute; which the trial court had held to be repugnant to the Constitution of the United States.

The decision of the Supreme Court for the State of Georgia, which is the subject of this Appeal, was entered on the 4th day of April, 1978. An Order denying Motion for Rehearing was entered on April 19, 1978.

This Appeal is taken pursuant to *28 United States Code 1257(2)*.

Respectfully submitted,

TISINGER, TISINGER & VANCE
A PROFESSIONAL CORPORATION

/s/ Robert D. Tisinger
ROB'T D. TISINGER

/s/ Thomas E. Greer
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Curtis Parham

CERTIFICATE OF SERVICE

I, Thomas E. Greer, Counsel for the Appellee in the above styled action, do hereby certify that I have served a copy of the within and foregoing NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT upon:

A. Montague Miller, Esq.
Thomas W. Tucker, Esq.
Burnside, Dye, Miller & Bowen
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(Attorneys for the Appellant,

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(Attorneys for Estelle A. Moreen,
Administratrix of the Estate of
Lemuel Moreen Parham, Deceased
Minor Child)

The above listed parties are all parties which the *Rules* of the United States Supreme Court require service in compliance with *Rule 33* of the *Rules of the United States Supreme Court* by depositing a true and correct

copy of the same in the United States Mail, properly addressed, and with sufficient postage affixed thereon.

This the 26th day of April, 1978.

/s/ Thomas E. Greer
THOMAS E. GREER

(Attorney for the Appellee, Curtis Parham)

OTHER RELEVANT OPINIONS AND PLEADINGS APPEARING IN JURISDICTIONAL STATEMENT

	JURISDICTIONAL STATEMENT Page Number
Supreme Court Upholding the Validity of the Georgia Wrongful Death Statute challenged as being in violation of the United States Constitution	1a
Denial of Motion for Rehearing by the Georgia Supreme Court	13a
Notice of Appeal to the United States Supreme Court	14a